

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ARTURO T. OCHOA,

Plaintiff,

v.

D. ESQUIVEL et al.,

Defendants.

3:14-cv-104-RCJ-VPC

SCREENING ORDER

I. DISCUSSION

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and an incomplete motion to proceed *in forma pauperis*. (ECF No. 1-1, 1-2). However, on at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the full \$350.00 filing fee in advance unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

In his complaint, Plaintiff appears to allege his dissatisfaction with the prison food. (See

¹ See *Ochoa v. Cook et al.*, 3:02-cv-450-LRH-VPC; *Ochoa v. Willis et al.*, 3:02-cv-545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter et al.*, 3:10-cv-364-HDM-RAM (dismissed as delusional and factually frivolous). The Court takes judicial notice of its prior records in the above matters.

1 generally ECF No. 1-2). The Court finds that these allegations fail to plausibly allege that
2 Plaintiff is in imminent danger of serious physical injury. See *Andrews v. Cervantes*, 493 F.3d
3 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the complaint
4 makes a plausible allegation that the prisoner faced imminent danger of serious physical injury
5 at the time of filing). To the extent that Plaintiff is alleging that prison officials are poisoning
6 his food, the Court notes that Plaintiff has filed several complaints in the past making those
7 same allegations and that the Court finds that such allegations are delusional and factually
8 frivolous. As such, Plaintiff must pre-pay the \$350.00 filing fee in full.

9 **II. CONCLUSION**

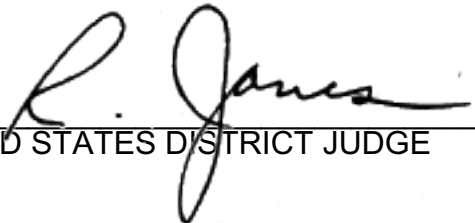
10 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed *in*
11 *forma pauperis* (ECF No. 1-1) is DENIED.

12 IT IS FURTHER ORDERED that this action will be DISMISSED without prejudice unless
13 Plaintiff pays the \$350.00 filing fee in full within thirty (30) days of entry of this order.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff two copies
15 of this order. Plaintiff shall make the necessary arrangements to have one copy of this order
16 attached to the check paying the filing fee.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall retain the complaint.

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19 Dated: This 3rd day of April, 2014.

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22 UNITED STATES DISTRICT JUDGE
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